

prospect of success, that is within three months of 1st October, 1949.

The present application was not made until 16th March, 1950. I have read with care the affidavits filed in support of it and in them I can find no reasonable excuse for the Applicant having failed to make his application immediately after the end of the Moratorium Proclamation. His excuse is that he made attempts to obtain payment of his debt without having recourse to further legal proceedings. That may well be, but ordinary prudence demanded that he should take timeous steps to protect his rights in the event of a settlement proving impossible, and if he failed to take such steps timeously he cannot now come to the Court to get him out of his difficulty.

The application is dismissed with costs to the Respondent.

Application dismissed.

**In Re TAN SOH SIM (F) DECD.;
THE OFFICIAL ADMINISTRATOR,
FEDERATION OF MALAYA**

v.

TAN SAW KEOW AND 17 OTHERS.

[Orig. Civ. Juris. (Thomson, J.) April 19, 1950]

[Ipoh — Originating Summons No. 331 of 1941]

Distribution Enactment—Distribution of estate of a Chinese domiciled in Perak—Law applicable—Document renouncing rights in an estate—Whether there was sufficient consideration—Natural love and affection—Whether parties stood in near relation to each other—Contract Enactment, s. 25.

In this Originating Summons the Official Administrator, the administrator of the estate of Tan Soh Sim deceased, applied for the determination of the manner in which the estate was to be distributed. It appeared that some of the persons who claimed shares in the estate had signed a document purporting to give up their claims to the estate in favour of other persons. One of the questions raised was whether this document was valid and binding on the parties to it.

Held, (1) that as the parties in this case, including the deceased, were domiciled in Perak, the law applicable was the law in Perak; (2) that the parties to the document in question did not stand in a near relation to each other within the meaning of s. 25 (a) of the Contract Enactment; that further, on the facts it did not appear that the document was made on account of natural love and affection; and therefore the document was not binding on the parties.

Cases referred to:—

- (1) *Whithorne v. Harris* 2 Ves. Sen. 528.
- (2) *Nisar Ahmad Khan v. Rahmat Begum* A.I.R. (1927) Oudh 146.

- (3) *Appa Pillai v. Ranga Pillai* I.L.R. 6 Mad. 71.
- (4) *Sarwan Singh v. Mt. Malan* A.I.R. (1929) Lah. 169.
- (5) *Mohamed Syedol Ariffin v. Yeoh Ooi Gark* (1916) L.R. 2. A.C. 575.
- (6) *Ellen Abd-ul-Messiah v. Chukri Farra* (1888) 13 App. Cas. 431.
- (7) *Yap Tham Thai v. Low Hup Neo* (1919) 1 F.M.S.L.R. 383.
- (8) *King v. Godwin* 6 Bing. 576.

ORIGINATING SUMMONS to determine the manner in which the estate is to be distributed.

R. W. Peters and C. W. Shuttleworth for the plaintiff.

M. S. Mahendran for the first defendant.

H. T. Ong for the third and sixth defendants.

R. Ramani and Chin Swee Onn for the second, fourth, fifth, tenth, eleventh, thirteenth, fourteenth, fifteenth, sixteenth and seventeenth defendants.

Seventh, eighth, ninth and eighteenth defendants no appearance.

Twelfth defendant in person.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Thomson, J. :— This Originating Summons was issued by the Official Administrator who is the grantee of Letters of Administration in the estate of Tan Soh Sim, deceased, to have determined the manner in which the estate is to be distributed.

Tan Soh Sim who died intestate at Teluk Anson at about 1 a.m. on 8th February, 1939, and to whom I shall refer in the course of this judgment as the deceased, was the widow of Chan Choo Yean. Chan Choo Yean died in 1932 and was survived by two widows, the deceased with whose estate I am here concerned and a secondary widow Tan Boey Kee who is the 17th Defendant to these proceedings, two adopted sons Chan Lam Keong and Chan Beng Keong who are the 13th and 14th Defendants, and two adopted daughters Chan Poh Keat and Chan Poh Hup who are the 15th and 16th Defendants. By his will which is dated 25th March, 1916, he appointed the deceased as executrix. Subject to one trifling legacy, he left the whole of his estate to the deceased in trust with virtually unlimited powers of sale, conversion and investment and with beneficial enjoyment of the whole income during her life. On her death the estate was to be divided in such shares and in such manner as she might

appoint, and in default of any such appointment in equal shares, among such of his children by Tan Soh Sim and such of his adopted children adopted by him after the date of his will as might be living at the time of his death. In fact Chan Choo Yean was not survived by any natural children and of the four adopted children who survived him the two adopted sons (Defendants Nos. 13 and 14) had been adopted by him prior to the date of his will. The deceased did not exercise the power of appointment given to her by the will of Chan Choo Yean and accordingly on her death the two adopted daughters, that is to say, 15th and 16th Defendants, became entitled to the estate of Chan Choo Yean in equal shares.

As has been said, the deceased herself died in the early hours of 8th February, 1939, and she died intestate. Her only surviving blood relatives were two full sisters who are the 1st and 2nd Defendants, a nephew and a niece, the children of a full sister who had died in 1915, who are the 10th and 11th Defendants, five half-sisters who are the 3rd, 4th, 5th, 6th and 7th Defendants, a half-brother who is the 9th Defendant, and another half-brother who was originally the 8th Defendant but who died in 1944 and in respect of whom his widow Lee Cheng Teen was substituted as a Defendant by order of the Court dated 3rd December, 1947. With the exception of the original 8th Defendant these relatives are all still alive. There also survived her and are still alive Tan Boey Kee (Defendant 17), the secondary widow of Chan Choo Yean, and the four adopted children of Chan Choo Yean (Defendants 13, 14, 15 and 16).

Early in February, 1939, while the deceased was in the last stages of her mortal illness and was unconscious, a document was drawn up by Mr. Chin Swee Onn, Solicitor of Ipoh, which bears the date 5th February, 1939, and which was stamped on 8th February, 1939. The circumstances attending the drawing up of that document will call for consideration at a later stage, and it is sufficient to observe here that it was admittedly executed by signature or by affixing of thumbprint by the four adopted children of Chan Choo Yean (Defendants 13, 14, 15 and 16), the secondary widow of Chan Choo Yean (Defendant 17) and all the blood relatives of Tan Soh Sim except her half-sister Khoo Saw Hon (Defendant 3) prior to the death of the deceased, and by Khoo Saw Hon on the day of the death of the deceased but subsequent to that event.

The material portions of that document are as follows :—

"We the undersigned relatives of Tan Soh Sim of Teluk Anson do hereby renounce all claims of whatsoever nature to the assets of Tan Soh Sim should the said Tan Soh Sim die intestate.

This renunciation of our claims is in favour of Chan Lam Keong, Chan Beng Keong, Chan Poh Keat, Chan Poh Hup and Tan Boey Kee in manner following:—

1. Tan Boey Kee is to have a life interest in Houses Nos. 83, 85, 87 and 89 Anson Road, Teluk Anson, and 18 Prince Street, Teluk Anson.
2. Tan Boey Kee is to have the half-interest of Tan Soh Sim in Shophouse No. 27, King Street, Teluk Anson.
3. Tan Boey Kee is to have the full interest of Tan Soh Sim in Shophouse No. 98, Market Street, Teluk Anson and Lot 195, Changkat Jong Road, Teluk Anson.
4. After death of Tan Boey Kee the houses Nos. 83, 85, 87 and 89 Anson Road, Teluk Anson and 18, Prince Street, Teluk Anson to devolve and be given to the children of Chan Lam Keong and Chan Beng Keong born through their respective principal wives.
5. The jewellery which Tan Soh Sim has earmarked for Chan Poh Keat and Chan Poh Hup is to be given to each of them.
6. Subject to above, the residue of the property of Tan Soh Sim is to go to Chan Lam Keong and Chan Beng Keong in equal shares."

Before considering the question of whether that document is valid and binding on the parties to it, it will be convenient to set out briefly the material events which followed its execution.

On 26th and 27th March, 1939, the 2nd, 4th, 5th and 7th Defendants executed instruments in identical terms by which in consideration in each case of a promise of \$500 to be paid to each of them by Defendants Nos. 13, 14 and 17, they purported to bind themselves to obligations identical with those they had purported to undertake by virtue of the instrument dated 5th February, 1939. I understand that in fact these sums of \$500 have not yet been paid.

On 27th April, 1939, Tan Saw Yong (Defendant 2) applied for Letters of Administration in the estate of deceased but caveats to the petition were entered by the 1st, 3rd, 6th, 8th, 9th, 10th and 11th Defendants. On 5th June, 1939, by consent, Letters of Administration were issued in favour of the Official Administrator. On 1st November, 1940, and on 7th June, 1941, instruments in identical terms were executed by the husband of the 8th Defendant and by the 9th, 10th, 11th and 12th Defendants whereby in consideration of certain payments to be made to them out of the estate they also purported to bind themselves to obligations identical with those they had purported to undertake by virtue of the instrument dated 5th February, 1939.

It is in the light of these events that I have to consider to what extent, if any, the parties to the present proceedings are entitled to share in the distribution of the estate of Tan Soh Sim.

It was conceded, and to my mind rightly conceded, by Mr. Ramani who appeared for those of the Defendants who were concerned to uphold the validity of the instrument dated 5th February, 1939, that by the law of England that instrument was an agreement which was void for want of consideration. In the circumstances, I do not feel called upon to discuss the point further. It would also be void for a similar reason by virtue of section 25 of the local Contract Enactment (Cap. 52), but it was argued with great persuasiveness that it was rescued from that predicament by reason of section 25(a) of the Enactment which provides that an agreement made without consideration is not void if :—

“(a) It is expressed in writing and is made on account of natural love and affection between parties standing in a near relation to each other”; It has not been suggested that that provision is to be read in any sense other than its ordinary grammatical sense, that is to say, as applying to agreements made between parties who stand in a near relation to each other and made by such parties on account of natural love and affection existing between them. Accordingly, what I have in effect to decide is whether in the first place the adopted children of Chan Choo Yean (i.e. Defendants 13, 14, 15 and 16) and, in the second place, the secondary widow of Chan Choo Yean (i.e. Defendant 17) “stand in a near relation” to the sisters and half-brothers and half-sisters of Tan Soh Sim, and if the answers to these questions be in the affirmative, whether in fact the instrument dated 5th February, 1939, was made by the parties to it on account of natural love and affection between them.

Before proceeding to enquire as to what persons can be held to come within the meaning of persons who stand “in a near relation to each other” there is a preliminary observation to be made which may materially assist in that enquiry. The words in question occur in a statute, that is in a written statement of the law, and they are not, therefore, to be construed in any sense that is unknown to the law. The law is concerned with rights and obligations and with those rights and obligations only which it recognises and the respect and performance of which it will enforce. And so relations between persons can only exist in the eyes of the law in so far as they give rise to rights and obligations. There is thus a great range of personal relationships that are outside the scope of the law. David acquires no rights against Jonathan by reason only of their friendship. A mistress acquires no legal rights against her lover nor does a drowning man incur any legal obligations to his rescuer by reason only of their relationship. When, therefore,

a statute refers to relations between persons it must, in the absence of anything to the contrary within its own four walls, be read as meaning relations of a sort that are known to the law, that is relations which in themselves are capable of giving rise to rights and obligations. Disregarding fine distinctions that belong to the sphere of scientific jurisprudence such relations may arise from status, from contract, from tort and from ownership of property.

Bearing in mind what has just been said, guidance may be sought in the interpretation of the statute from the statute itself, from the English authorities and from the Indian authorities.

As regards the statute itself the only guidance to be found is in Illustration (b) to section 25 which refers to a promise made by a father to his son on account of natural love and affection and states that this is a contract. At first sight this would suggest that the relationship which the Legislature had in mind was one arising from consanguinity. A relationship, however, may be classified not only according to its cause but also according to its essential attributes, and so the relationship of father and son may be regarded not only as one of blood but also as one which by reason of the status of the parties to it is in itself capable of giving rise to legal rights and obligations. It is not clear from the Illustration alone which of these aspects of the relationship the Legislature had in mind but in either case the fact that no other relationship is mentioned to some extent, though perhaps not by itself conclusively, shews an intention to exclude any relationship that does not rise from status.

Little assistance is to be derived from a consideration of the English cases in which the Courts have had before them references to ‘relations’ or ‘relatives’, and it is not necessary to deal with them at length. A typical one is the case of *Whithorne v. Harris*⁽¹⁾ where in dealing with a bequest to “near relations” Lord Hardwicke, L.C., declared that “such relations only, as would be entitled to a distributive share of her personal estate according to the statute for settling intestate’s estates, were within the description of near relations entitled to it”. The difficulty of applying the English cases here is that so far as I have been able to advise myself they are all concerned with interpreting expressions in wills, a connection in which demands of practical certainty are more imperative than are those of logical consistency, and in all of them the Court would seem to have been influenced by arguments of convenience. So far as they go, however, they are certainly against the recognition of any relationship not arising from status.

Finally, I come to the Indian authorities and it is hardly necessary to observe that in construing what is in effect an Indian statute these are entitled to very considerable respect though in view of the pertinacity with which Indian litigants frequently pursue justice they are surprisingly few in number. On a consideration of these it can fairly be said that the Indian Courts have recognised for the purposes of this particular section not only blood relationships but family relationships not arising from consanguinity which are recognised by Hindu or Mohamedan law as the case may be.

In the case of *Nisar Ahmad Khan v. Rahmat Begum*⁽²⁾ it was held that the parents of a Mohamedan woman stood "in a near relation" to her husband, and in that connection the Court made the following observations:—

"In a Mohamedan family are the husband and wife parties standing in a near relation to their daughter's husband? When the meaning of this proviso has been under discussion in previous cases there appears to have been a tendency to interpret the words "parties standing in a near relation" as though they mean "near relatives". We are of opinion that the meaning of the words should not be narrowed down in this way. There are many instances in which persons, who are not relatives or relations within the meaning of the law, nevertheless stand in a near relation to one another. But in any circumstances the parents of the Mohamedan lady are relatives of her husband and we consider that they must be determined to be parties standing in a near relation to him."

A similar attitude towards the members of an undivided Hindu family irrespective of whether they be united by ties of blood is to be deduced from the Madras case of *Appa Pillai v. Ranga Pillai*⁽³⁾

At first sight these cases would appear to be at variance with the later Lahore case of *Sarwan Singh v. Mt. Malan*⁽⁴⁾ where it was held that an agreement on the part of an adoptive father in favour of his adopted son was not binding on him if it is without consideration. The Court gave no reasons for its decision but as the adopted son was also in fact the natural nephew of the adoptive father it can, to my mind, safely be assumed that the case was decided on grounds unconnected with the relationship of the parties.

On a consideration of the matter as a whole I have come to the conclusion that when the section refers to persons who stand in a near relation to each other it means persons who stand to each other in a relationship which is in fact near and which is of a sort recognised by the law as being capable of giving rise to rights and duties springing from the status of the parties. Such a construction is supported by the Indian cases and any wider construction would certainly be inconsistent with the English cases. Moreover it

avoids the supposition that the statute for this one purpose intended to recognise the existence of relationships otherwise unknown to the law; it rejects as *ex hypothesi* absurd the possibility that relations arising from contract were intended to be included; and it rejects as repugnant to common sense the supposition that any tenderness was intended to the relations between a tortfeasor and his victim or between the owners of dominant and servient tenements. Finally, it is the construction which most nearly coincides with the Illustration provided by the Legislature and in that connection I would quote the words of Lord Shaw of Dunfermline in the case of *Mahomed Syedol Ariffin v. Yeoh Ooi Gark*⁽⁵⁾ where with reference to the Illustrations provided to the Straits Settlements Evidence Enactment His Lordship said:—

"Their Lordships are of opinion that in the construction of the Evidence Ordinance it is the duty of a Court of law to accept, if that can be done, the illustrations given as being both of relevance and value in the construction of the text. . . . it would require a very special case to warrant their rejection on the ground of their assumed repugnancy to the sections themselves. It would be the very last resort of construction to make any such assumption. The great usefulness of the illustrations, which have, although not part of the sections, been expressly furnished by the Legislature as helpful in the working and application of the statute, should not be thus impaired."

Before the conclusion at which I have thus arrived can be applied to the present case it is necessary to consider by what law the status of the persons concerned is to be determined. To my mind there can be no doubt that the law to be applied is the law of their domicile. As was said by Lord Watson in the case of *Ellen Abd-ul-Messiah v. Chukri Farra*⁽⁶⁾, "it is a settled rule of English law that civil status, with its attendant rights and disabilities, depends . . . upon domicile alone", and I can find nothing to suggest that in Perak the personal law of Chinese is to be determined by any other test.

In this connection it is necessary to refer briefly to the history of the law in Perak relating to Chinese persons. It is unnecessary to speculate as to what the position was prior to 1893 but in that year the Legislature enacted the recognition of Chinese Laws Order in Council (No. 23/1893). That Order (as amended in 1895) stated that it was expedient that certain national laws and customs of the Empire of China regarding marriage, adoption and inheritance should be recognised as law and enforced by the courts of the State of Perak in adjudicating upon such matters among the Chinese community. It declared certain Chinese laws and customs which it set out to be law in the State of Perak and provided that these were to be observed by tribunals in adjudicating upon any of

the matters therein referred to in respect of any proceeding in which either of the parties was of Chinese nationality. The laws and customs referred to related to marriage, the position of secondary wives, the position of adopted sons, and succession both testate and intestate. In practice the provisions of the Order would seem to have been regarded from its commencement as applying to all persons of Chinese race within the State of Perak irrespective of their nationality or place of domicile, and that practice received judicial sanction in 1919 from the judgment of the Court of Appeal in the case of *Yap Tham Thai v. Low Hup Neo*⁽⁷⁾. The Order in Council of 1893 was followed in 1899 by the Secretary of Chinese Affairs Enactment the provisions of which do not call for discussion here.

From 1893 onwards, the Courts of the Federated Malay States consistently applied the principles of the Perak Order in Council of that year (though with certain modifications outside the State of Perak) to all questions relating to Chinese family life and in particular in cases affecting the position of secondary wives and adopted sons. It is unnecessary to consider these cases at length but in *Yap Tham Thai's* case *supra*, Innes, Ag. C.J.C., said that judges were obliged in declaring the personal law applicable to Chinese to pay regard to the existence of certain broad principles and institutions which govern family life throughout China and the family life of Chinese resident here. He went on to say:—

"The Perak Order in Council sets out these broad principles. They enter so completely into the essence of Chinese family life that every Chinese must hold the recognition of them to be inseparable from the administration of justice by the Courts of these States, to which Chinese resort in very large numbers."

Such was the legal position until the coming into force on 1st January, 1930, of the Distribution Enactment, 1929. That enactment repealed the Perak Order in Council and the effect of that repeal was "to obliterate it as completely . . . as if it had never existed" (per Tindal, C.J., in *King v. Godwin*⁽⁸⁾). The enactment itself contained exhaustive provisions for the distribution of intestate estates. The substance of these provisions, as subsequently amended in 1932, was briefly that on the death intestate of any person, other than a person professing the Mohamedan religion, the distribution of his movable property should be regulated by the law of the country in which he had his domicile at the time of his death and that the distribution of his immovable property should be regulated in accordance with rules contained in the enactment irrespective of his place of domicile.

The effect of the repeal of the Order in Council of 1893 and the subsequent repeal in 1932 of the

Secretary of Chinese Affairs Enactment, 1899, was to make a radical alteration in the position of Chinese persons. These were the only local enactments that had recognised the personal law of Chinese irrespective of their place of domicile. They were swept away, and Chinese were placed in the same position as all other persons, that is to say, in so far as their personal status was subject at all to the law of China, it was only so subject if they were domiciled there. If they acquired a domicile in Perak their personal status and rights and duties arising from it were to be and are governed by the local law.

The question of the place of domicile of the parties to the instrument dated 5th February, 1939, was not argued before me but I have no doubt, and I so find in fact, that in each case their domicile in 1939 was in Perak. They all resided in Perak and there is not a scrap of evidence that even suggests that any one of them had ever resided anywhere else. Chan Choo Yean, the husband of Tan Soh Sim also resided there and when he made his will in 1916 he made it in local form. The adopted children of Chan Choo Yean (i.e. Defendants 13, 14, 15 and 16) were all adopted by him in extreme infancy. Tan Boey Kee (Defendant 17) stated in her affidavit that she became the secondary wife of Chan Choo Yean in 1903 and had continuously since that time resided at No. 89, Anson Road, Teluk Anson, "which is the family house". Mr. Chin Swee Onn who had been the family solicitor for six years prior to the death of Tan Soh Sim in 1939 stated that the members of the family were well known to him and that he advised them that if Tan Soh Sim were to die intestate the adopted children would be excluded from the succession. As a Chinese Mr. Chin Swee Onn presumably has some knowledge of the law of China which would admit at any rate the adopted sons to the succession. As a practising lawyer in Ipoh he must be held to be expert in the local law which would exclude them from it if the deceased were domiciled here. In the circumstances, the inference is clear that to his knowledge the parties had their domicile in Perak.

It follows, then, that the personal law of all the parties is the law as it existed in Perak in 1939 and the way is now open to consider whether the relationship among them is such as to confer upon any of them rights and obligations in relation to the others arising from their status so as to enable me to say that they stand in a near relation to each other. In this connection, however, it must be made clear that I am concerned only with the law as it exists in Perak since 1929. I am not concerned with the law of the Straits Settlements and in view of certain observations by

Innes, Ag. C.J.C., in *Yap Tham Thai's*⁽⁷⁾ case there may be a difficulty in ascertaining the present state of the law in the other former Federated Malay States which need not be considered here.

First I take the relation of the four adopted children to the sisters and half-brothers and half-sisters of their adoptive mother. Clearly here there are neither legal rights nor obligations. I know of no law that would enable these adopted children to make any claim against or would subject them to any claim by the blood relations of the adoptive mother in life nor in view of the express terms of the Distribution Enactment would any one of the one group have any claim against the estate of any one of the other group after death. Nor is the secondary widow Tan Boey Kee in any better position. The position of secondary widows whose late husbands have died domiciled in the Federated Malay States does not appear to have been considered by the Courts as it is affected by the repeal of the Order in Council of 1893, and in considering it now I do not wish to go an inch further than is necessary for the purposes of the present case. I content myself with saying that I fail to see and can find no authority for saying that there was at any time any relationship capable of giving rise to rights and obligations between Tan Boey Kee and the blood relations of the other widow of her late husband. All these relationships may or may not be recognised by the law of China but they are not recognised by the law here and in view of the domicile of the parties it is the local law that is their personal law.

The Agreement dated 5th February is, then, by itself invalid because, being without consideration, the parties between whom it was made did not stand in a near relation to each other.

Even, however, had it been possible to hold that these parties did stand in a near relation to each other it would be impossible on the evidence to hold that they made it on account of any natural love and affection for each other.

The evidence in the case consists of affidavits made by persons who are giving their recollections of what happened nine years previously. In the circumstances, it is not surprising that the rays of truth find difficulty in penetrating this cloud of affidavits, but if there is one thing that does clearly shine through them it is that whatever it was that induced the parties to execute the Agreement dated 5th February, 1939, it was not any love and affection, natural or otherwise, which they had for each other.

First, I take the affidavit of Mr. Chin Swee Onn. That affidavit which was made on 23rd August, 1948, has to be considered in the light of the very inconvenient letter which the deponent wrote to the solicitor for Tan Saw Keow (Defendant 1) on 25th March, 1939, in which he stated that Tan Saw Keow signed the document in question after the two adopted sons of the deceased (i.e. Defendants 13 and 14) had assured her that "they would support her and look after her". Nine years later his recollection was to the effect that he explained to the assembled members of the family the results which would ensue if Tan Soh Sim died intestate and that Tan Boey Kee (i.e. Defendant 17) told them what were the testamentary intentions of Tan Soh Sim:—

"Thereupon" the affidavit proceeds, "every one present signified to me that he or she would agree to the wishes of Tan Soh Sim being carried out, as they were anxious to repay to her in some measure the love and affection she had for them and gratefully remembering many acts of kindness every one of them had experienced at her hands."

Tan Saw Yong (Defendant 2), Khoo Saw Kheok (Defendant 4) and Tan Boey Kee (Defendant 17) in their affidavits all confirmed the accuracy of Mr. Chin Swee Onn's affidavit and the last of them added a number of instances of generosity shewn by Tan Soh Sim to her sisters and half-sisters of such a sort that the love and affection which no doubt existed between them by nature would derive additional warmth from the flame of gratitude.

On the other hand Tan Saw Keow (Defendant 1), Khoo Saw Hon (Defendant 3) and Khoo Saw Low (Defendant 6) all swore that they did not fully understand the nature of the document they were signing but signed it under the impression that its only purpose was to enable the adopted sons to take steps to administer the estate.

If it were necessary to determine the question of which of these two versions of the events accompanying the signing of the instrument comes nearer to the truth it would, of course, be highly undesirable to proceed on affidavit evidence only. That, however, is not the question that arises. Affidavits are considered statements drawn up in cold blood and it is by no means cynical to observe that persons making them are not wholly regardless of the purpose which they are designed to serve. What is the position here? None of the adopted children has sworn an affidavit. The solicitor who drew the instrument and supervised its execution, two of the Defendants who subsequently in effect ratified it and the secondary wife who was to benefit by it to a very large extent all swore affidavits as to the circumstances of its execution, and not one

of them was able to recollect the circumstance the existence of which was so vitally essential to its validity that it was made on account of natural love and affection which existed between the sisters and half-sisters who lost everything by it and on the other hand the adopted children and Tan Boey Kee who gained everything. It is all very well for Mr. Ramani to say that a distinction must be drawn between the motive for the Agreement and the consideration. In a case where as here there is *ex hypothesi* no consideration, such an intellectual feat though interesting, would be singularly useless. And if he meant that a distinction should be drawn between the motives which appear on the affidavits filed in support of the instrument and some other motive the existence of which has not been proved but which if it were proved would help out his clients' case, I must decline to take to the wings of speculation. The truth is that the onus of proving that the instrument was made on account of natural love and affection rests on these parties who set up its validity, and that far from proving that fact they have not adduced a scintilla of evidence in support of it.

That is the end of the case so far as concerns Khoo Saw Hon (Defendant 3) and Khoo Saw Low (Defendant 6), and subject to the dispute between her and the 18th Defendant so far as concerns Tan Saw Keow (Defendant 1). It is not, however, the end of it as far as the other Defendants are concerned.

On 26th and 27th March, 1939, written agreements were entered into by the 2nd Defendant, the 4th Defendant, the 5th Defendant and the 7th Defendant on the one side and the 13th and 14th Defendants on the other side. These agreements are in identical terms. In each of them the party making it in consideration of \$500 to be paid to her by the 13th, 14th and 17th Defendants declares she has no right or interest in the distribution of the estate of Tan Soh Sim and agrees that it shall be distributed in the manner provided in the instrument dated 5th February, 1939. These agreements on the face of them are valid and binding on the parties to them and their validity has not been contested. Difficulties may arise in the future as to the interpretation of some of their terms but I am not concerned with these difficulties here. All I am concerned here and now to say is that the agreements are valid and binding on the parties who made them and have the effect in each case of assigning to the 13th, 14th, 15th, 16th and 17th Defendants the whole of the interest of the parties making them in the estate of Tan Soh Sim.

At a later stage agreements were made between the 13th, 14th, 15th, 16th and 17th Defendants on

one hand and on 1st November, 1940, the husband of the present 8th Defendant, on 7th June, 1941, the 9th Defendant, and on the same day the 10th, 11th and 12th Defendants on the other hand. It is not necessary to deal with those agreements at length. They represent the terms of the compromise of the litigation which ended with the grant of Letters of Administration to the Official Administrator, and it has never been questioned that they are valid and binding on the parties to them. Their effect is that Khoo Kee Hock, whose rights have passed to the 8th Defendant, and the 9th Defendant are each to receive \$2,000 out of the estate, that the 10th, 11th and 12th Defendants are together to receive \$4,000 out of the estate, that each of these parties renounces any further claim on the estate and that each of them assigns the whole of the remainder of his or her share in the estate to the 13th, 14th, 15th, 16th and 17th Defendants and certain children of the 13th and 14th Defendants to be apportioned among them in the manner provided in the instrument dated 5th February, 1939.

It follows from what has been said that Khoo Saw Hon (Defendant 3) and Khoo Saw Low (Defendant 6) are each entitled to share in the estate in accordance with the Distribution Enactment, that is to say, each of them is entitled to a one-tenth distributive share. Subject to the decision of the question in issue between her and Lee Siew Eng (Defendant 18) with which I shall deal presently, Tan Saw Keow (Defendant 1) is also entitled to a one-tenth distributive share.

Tan Saw Yong (Defendant 2), Khoo Saw Kheok (Defendant 4), Khoo Saw Thin (Defendant 5) and Khoo Saw Choo (Defendant 7), that is to say the parties who executed the agreements dated 26th and 27th March, 1939, are not entitled to any share whatsoever.

By virtue of the agreement dated 1st November, 1940, Lee Cheng Teen (Defendant 8) is entitled to receive \$2,000, by virtue of the agreement dated 7th June, 1941, to which they are parties, Koay Lay Khuan (Defendant 10), Koay Lay Kheng (Defendant 11) and Koay Oon Jong (Defendant 12) are entitled to the sum of \$4,000 to be divided equally amongst them, and by virtue of the agreement of the same date to which he is a party Khoo Khee Hoe (Defendant 9) is also entitled to receive \$2,000.

The residue of the estate falls to be divided among Chan Lam Keong (Defendant 13), Chan Beng Keong (Defendant 14) Chan Poh Keat (Defendant 15), Chan Poh Hup (Defendant 16), Tan Boey Kee

(Defendant 17) and certain of the children, if any, of Chan Lam Keong and Chan Beng Keong. On the material before me it is impossible to say in what proportions this division is to be made. Clearly it must be based upon the provisions, which so far as they are material are identical, of the various agreements in the case. I am not, however, prepared at this stage to undertake the construction of these agreements. For one thing, the parties making them clearly contemplated that the whole of the estate of Tan Soh Sim would be involved. It is now clear that only a portion of it is involved and I have not had the benefit of listening to argument as to what effect that may have upon the construction of the agreements. Moreover, there are certain questions of fact involved regarding which there is no evidence. The agreements purport to give Chan Poh Keat (Defendant 15) and Chan Poh Hup (Defendant 16) rights to the jewellery which Tan Soh Sim had "earmarked" for them, but there is no evidence as to what that jewellery consists of. Certain immovable property is given to Tan Boey Kee (Defendant 17), but there is no evidence to show whether that is property of which Tan Poh Sim was the beneficial owner or property in which she only had a life interest by virtue of the will of Chan Choo Yean. In that connection, I understand that the whole question of dividing the property of which Tan Soh Sim was the beneficial owner from that in which she only had a life interest is subject to controversy and will have to form the subject of an enquiry at a later stage. Finally, the agreements purport to give certain rights to certain children of Chan Lam Keong (Defendant 13) and Chan Beng Keong (Defendant 14), but there is no evidence as to who these children are. This portion of the case therefore, will have to be dealt with

at some future date. Such a postponement is inevitable but in any event I view it with the less regret by reason of the impression I have gained from the course of the litigation so far that it is capable of settlement among the parties concerned by mutual agreement.

There remains the question of the respective rights of Tan Saw Keow (Defendant 1) and Lee Siew Eng (Defendant 18), to the distributive share in the estate which would otherwise go to Tan Saw Keow. That question depends on the validity of an instrument dated 14th July, 1939, whereby Tan Saw Keow purported for a consideration of \$10,000 to assign her share in the estate to one Lim Hong Ghee, now deceased, of whose estate Lee Siew Eng is administratrix. The determination of that question depends upon issues of fact which cannot be dealt with on affidavit evidence. I accordingly direct that the question be tried as a separate issue on a future date to be appointed.

In conclusion I come to the question of costs. This is not a case where costs should come out of the estate for if the parties had not by their own acts attempted to distribute the substance of the estate there would have been no grounds for the present litigation. The costs therefore will be borne by the parties and will follow the event.

There will be excluded from the order I am about to make such costs as the Registrar may find to have been incurred exclusively in connection with the issue between the 1st and 18th Defendants the consideration of which has been postponed. Subject to that provision the 13th, 14th, 15th, 16th and 17th Defendants will be condemned jointly to pay the taxed costs of all the other parties.

Order accordingly.

